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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1176th MEETING

Held at the Palais des Nations, Geneva
on Friday, 31 July 1992, at 10 a.m.

Chairman: Mr. POCAR

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Annual report of the Committee to the General Assembly through the Economic and Social Council under article 45 of the Covenant and article 6 of the Optional Protocol (continued)

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1176/Add.1; the summary record of the third part (public) of the meeting appears as document CCPR/C/1176/Add.2.

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GE.92-16854 (E)

The meeting was called to order at 10.20 a.m.

ANNUAL REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY THROUGH THE ECONOMIC AND SOCIAL COUNCIL UNDER ARTICLE 45 OF THE COVENANT AND ARTICLE 6 OF THE OPTIONAL PROTOCOL (agenda item 7) (continued)

1. The CHAIRMAN invited the Committee to resume its consideration of the various parts of the draft annual report.

Document CCPR/C/45/CRP.1/Add.14 (Republic of Korea)

Paragraphs 1-13

2. Paragraphs 1-13 were adopted.

Paragraphs 14-19

3. Mr. DIMITRIJEVIC said he believed that the observations regarding the Social Surveillance Act, in paragraph 14, did not accurately reflect the concern that had been expressed by the Committee. To his recollection the Committee's main concern had been over the fact that the period of surveillance, which could last for two years, could be renewed indefinitely. The first sentence of the paragraph should be amended accordingly.

4. Mrs. HIGGINS said she seemed to recall that the relevant provisions applied after a detainee had been released. The Rapporteur might check that point by reference to the summary records.

5. The CHAIRMAN suggested that the Rapporteur should be asked to do so and then amend the paragraph accordingly.

6. It was so decided.

7. Paragraphs 14-19, as orally amended, were adopted.

Paragraphs 20-33

8. Paragraphs 20-33 were adopted.

Paragraphs 34-39 (Concluding observations)

9. Miss CHANET stressed the need for consistency between the comments of the Committee as a whole and the concluding observations made by individual members. She hoped that the Rapporteur would ensure that all the elements that appeared in the former were also present in the latter.

10. Mr. WENNERGREN said he would like to add to paragraph 37, after the remark concerning the excessively long periods of pre-trial detention, a phrase reflecting the lack of clarity noted with regard to the application of habeas corpus pursuant to article 9 (3) of the Covenant.

11. Mr. DIMITRIJEVIC expressed a similar concern to Miss Chanet's. The Committee had adopted comments on the initial report of the Republic of Korea (CCPR/C/68/Add.1) in which it had employed the term "prisoners of conscience". However, the concluding observations in the document under consideration (CCPR/C/45/CRP.1/Add.14) referred to "political prisoners". The same terminology should be used in both texts.

12. Mr. HERNDL endorsed the remarks made by Miss Chanet and Mr. Dimitrijevic. Although he had previously favoured the term "prisoners of conscience", after consideration he felt that the debate had focused more particularly on the question of political prisoners. He suggested that the words "the high number of political prisoners" in paragraph 37 should be replaced by "the continued existence of persons detained on grounds of their political opinion".

13. Mr. SADI associated himself with Mr. Herndl's suggestion and proposed that the comments of the Committee as a whole should also be amended to take account of that wording.

14. It was so decided.

15. Paragraphs 34-39, as orally amended, were adopted.

16. Document CCPR/C/45/CRP.1/Add.14, as orally amended, was adopted.

Document CCPR/C/45/CRP.1/Add.15 (Republic of Belarus)

Paragraphs 1-29

17. Paragraphs 1-29 were adopted.

Paragraphs 30-33 (Concluding observations)

18. Mr. WENNERGREN suggested that the words "of all democratic countries" in paragraph 31 should be replaced by "of democratic countries".

19. Paragraph 30-33, as orally amended, were adopted.

20. Mr. HERNDL said he wished to make a remark in connection with the comments of the Committee as a whole which would be inserted immediately after paragraph 33. He recalled that it had been decided to add the following sentence to that part of the comments devoted to subjects of concern to the Committee: "The retention of the classification of persons belonging to a particular religion, as a distinct nationality, is also without justification". He pointed out that the issue of a "distinct nationality" essentially concerned persons of the Jewish religion. Accordingly, he wished to have the words "in particular the Jewish faith" inserted after the words "a particular religion".

21. Mr. SADI suggested that it would be preferable to use the words "belonging to any religion".

22. Mr. DIMITRIJEVIC said he had not been present at the meeting during which the decision had been taken to add the sentence cited by Mr. Herndl. He was surprised by such a decision, as it was no easy matter to determine whether the Jewish community was per se a religious or an ethnic one. In general, the Committee should not allow itself to be influenced by the terminology employed in Eastern European countries, where there was considerable confusion over the distinction between a nationality and an ethnic minority. It would be preferable to delete the sentence mentioned by Mr. Herndl or, at the least, to employ extremely cautious wording, all the more so because it had become apparent in the debate on the third periodic report of Belarus (CCPR/C/52/Add.8) that the Belarusian delegation used the word "nationality" to refer to ethnic minorities.

23. Mr ANDO (Rapporteur) suggested that the word nationality should be placed between inverted commas, in response to Mr. Dimitrijevic's concern.

24. Miss CHANET said it was absurd to assert that a religion could be a nationality; moreover, the whole of the discussion with the Belarusian delegation on that issue had been based on a misunderstanding over the definition of the terms used. Nevertheless, the essential issue for the Committee was to determine whether the Jewish community was the victim of discrimination and, if so, to make it clear that such a situation could not be condoned under the Covenant.

25. Mr. MÜLLERSON said that Mr. Herndl's remark was highly relevant to Belarus, and to the other Republics of the former USSR in general. The passports of the citizens of the various Republics had previously contained an indication of their nationality, which had been distinguished from citizenship. The provision was, moreover, still in force in some of the countries concerned. Its principal consequence had been to give rise to discrimination against certain ethnic groups. For that reason the sentence cited by Mr. Herndl should be retained, although it might be possible to use the words "ethnic group" rather than "distinct nationality".

26. The CHAIRMAN said he thought that Mr. Herndl's remarks faithfully reflected the discussion that had taken place with the Belarusian delegation. In that connection he referred to paragraphs 8 and 11 of the document under consideration (CCPR/C/45/CRP.1/Add.15) and recalled that the delegation had been perfectly clear on the issue, asserting that Jews constituted a minority in Belarus, as was indicated in paragraph 11.

27. Mr. DIMITRIJEVIC said he had no objection to the sentence in question appearing in the concluding observations of the members of the Committee, as it reflected part of the debate that had actually taken place with the Belarusian delegation. However, he thought that the comments of the Committee as a whole, whose nature was quite different, should not use the same sentence, as that might lead to a misunderstanding on the issue.

28. Mr. PRADO VALLEJO pointed out that the situation of Jews, prior to the collapse of the Soviet Union and since, was familiar to all. Everyone knew that

they had been the victims of discrimination in the USSR and that some forms of discrimination still persisted. For that reason, he supported Mr. Herndl's proposal, which in his view clarified the issue as well as faithfully reflecting the discussion that had taken place when the third periodic report of Belarus (CCPR/C/52/Add.8) had been considered and the spirit of the comments of the Committee as a whole which had been adopted.

29. Mr. SADI said he thought that the classification of people belonging to a particular religion - whether Jewish, Muslim or other - as members of a nationality was quite contrary to the provisions of the Covenant. For example, Muslims in Yugoslavia should not be considered by the Yugoslav authorities as members of a distinct nationality on account of their religion. The relevant sentence should be maintained in the Committee's comments.

30. Mr. HERNDL said he believed there was an emerging consensus in favour of leaving it to the Rapporteur to decide precisely which terms to use, but that the Committee accepted the idea of raising the question of the classification of persons belonging to a particular religion, and of mentioning in particular the Jewish faith.

31. The CHAIRMAN invited the Rapporteur to alter the comments of the Committee as a whole in accordance with Mr. Herndl's suggestion and to amend the concluding observations of the members of the Committee accordingly, if necessary.

32. Document CCPR/C/45/CRP.1/Add.15, as orally amended, was adopted.

Document CCPR/C/45/CRP.1/Add.25 (Consideration of communications under the Optional Protocol)

Paragraph 1

33. Mr. ANDO (Rapporteur) first of all drew attention to two corrections: the number of States that had ratified or acceded to the Covenant was now 112, and 66 of them had become parties to the Optional Protocol.

34. The members of the Secretariat unit responsible for communications had informed him that they received numerous requests from States parties and from the authors of communications asking what publicity was given to the documentation relating to communications and to what extent the documentation remained confidential. In its 1984 report (A/39/40) the Committee had devoted the following paragraph (para. 559) to procedural matters: "Consideration of communications under the Optional Protocol takes place in closed meetings (art. 5 (3) of the Optional Protocol). All documents pertaining to the work of the Committee under the Optional Protocol (submissions from the parties and other working documents of the Committee) are confidential. The texts of final decisions of the Committee, consisting of views adopted under article 5 (4) of the Optional Protocol, are however made public. As regards decisions declaring a communication inadmissible, which are also final, the Committee has decided that it will normally make these decisions public, substituting initials for the

names of the alleged victim(s) and the author(s)." He proposed that the Committee should insert in its current annual report a similar paragraph which would become paragraph 1 bis, in order to provide States parties and authors with precise information on the procedure followed by the Committee.

35. Mrs. HIGGINS endorsed the Rapporteur's proposal. She nevertheless noted that there was no indication as to where the persons concerned could find the published version of the decisions declaring communications admissible. Accordingly, she suggested adding the following sentence: "The final views also contain the decision on admissibility in the particular case."

36. Mr. MOLLER (Centre for Human Rights) confirmed that until 1984 the Committee had regularly indicated that the meetings were closed and that the documentation, including the documents provided by authors and by States parties, was confidential. That observation had, however, been omitted from the 1985 report because of the reorganization of the Committee's work. As a result, States parties had frequently asked the Centre whether the change meant that the Committee no longer considered the documentation provided by them to be confidential and that it could freely be made public, particularly through the press. Accordingly, it would be useful to reinsert the paragraph cited by the Rapporteur into the current report, in order to dispel any doubt in that respect.

37. Mr. WENNERGREN said that the Committee should emphasize that all the documentation remained confidential, even within the State party concerned, whose responsibility it was to decide whether to publish certain documents in accordance with its own legislation.

38. The CHAIRMAN said he did not think that it was appropriate, when the annual report was being adopted, to begin a debate on the issue of the confidentiality of documentation, which could be discussed at a later date. He nevertheless thought that it was useful, both for the Committee and for States parties, to insert into the report a new paragraph drafted in accordance with the Rapporteur's proposal, to which the sentence proposed by Mrs. Higgins could be added.

39. It was so decided.

40. Paragraph 1 and new paragraph 1 bis were adopted.

Paragraphs 2-8

41. Mr. ANDO (Rapporteur) said that, with the assistance of the Secretariat, he would complete or update the section on the status of the communications registered, in accordance with the decisions taken at the current session.

42. Mrs. HIGGINS objected to the use of the word "unfounded" which appeared on the last line of paragraph 4, as it was not appropriate for the Committee to

state a priori whether or not a communication was founded. She also proposed that a paragraph 7 bis should be added to indicate the number of communications declared admissible during the period under review.

43. Mr. ANDO (Rapporteur) endorsed Mrs. Higgins' proposal. He thought that it would also be necessary to indicate the number of communications discontinued or withdrawn.

44. It was so decided.

45. Paragraphs 2-8, including new paragraph 7 bis, were adopted.

Paragraph 9

46. Mr. ANDO (Rapporteur) said he believed that the Committee would wish to reconfirm the decision it had taken on the question of the Secretariat's resources at a previous meeting, by reformulating the first sentence of paragraph 9 in the following manner: "As the Committee has already stated in previous annual reports, and has indicated in paragraph ... of this annual report, ...".

47. Mr. HERNDL supported the Rapporteur's proposal. He further proposed indicating in the last sentence of paragraph 9 that the Committee reiterated its request to the Secretary-General to take the necessary steps to ensure a substantial increase in the "specialized" staff assigned to service the Committee.

48. Miss CHANET endorsed Mr. Herndl's proposal and pointed out, furthermore, that the staff in question should be specialized "in the different legal systems".

49. Mr. SADI said that it was clearly vital to reinforce the Secretariat's staff. However, he wondered whether that would be sufficient, in view of the Committee's steadily increasing workload. In his view, the Committee should also request authorization to meet for an extra week during its autumn session, in order to eliminate the backlog that had built up in the consideration of communications.

50. Mrs. HIGGINS endorsed Mr. Sadi's proposal, but said she would prefer the Committee to consider extending the duration of its sessions in the interests of its work as a whole, and not solely to consider communications.

51. Miss CHANET observed that extending the duration of the Committee's sessions would undoubtedly raise problems for the members, who had other responsibilities, particularly in their own country. If the question arose, it should be discussed in depth at an appropriate moment. In any event, the lack of time was detrimental not only to the consideration of communications; the problem also affected the consideration of periodic reports, which would be increasingly numerous.

52. Mr. AGUILAR URBINA supported Miss Chanet's opinion. The number of periodic reports was constantly increasing and preparation of their consideration required considerable work by the Secretariat. At the present stage, priority should therefore be given to increasing the staff of the Secretariat.

53. The CHAIRMAN said he also thought that the question of extended sessions could be discussed at a later date, and that it was not appropriate to address the issue in the current annual report.

54. Paragraph 9, as orally amended, was adopted.

Paragraphs 10-14

55. Paragraphs 10-14 were adopted.

Paragraphs 15-71

56. Mr. MÜLLERSON said he thought that the term "prima facie" in paragraph 18 could be deleted and replaced by the form of words recently decided upon by the Committee, to the effect that the author had not substantiated his allegation for the purposes of admissibility. Moreover, he found paragraph 23 superfluous, as the Committee's jurisprudence was constantly evolving. However, if paragraph 23 was maintained, the words "of the Covenant" should be inserted after the word "drafters" in the first sentence of the English text and care should be taken to ensure that the text of the other versions properly reflected that wording.

57. Mrs. HIGGINS agreed that there was no need to maintain paragraph 23, which was tantamount to a commentary on the manner in which the Committee proceeded, whereas the report should concern the work itself. It would be preferable to replace paragraph 23 by a wholly neutral formula such as the following: "In its work under the Optional Protocol, the Committee has had several occasions to point out that it is not a further court of appeal on the domestic law of States parties against whom communications are brought." The following three paragraphs would then follow on logically. Moreover, the last sentence of paragraph 27 should be deleted, as it had no place within an analytical commentary. In the seventh line of paragraph 20, the words "for purposes of admissibility", should be inserted after the words "their claims". Lastly, with regard to paragraph 21, if the allegation came under article 2 of the Optional Protocol, the end of the last sentence should be amended in the following manner: "... and that consequently the complainants had not substantiated any claim in respect of these articles by mere reference to ...".

58. Paragraphs 15-71, with the oral amendments to paragraphs 18, 20, 21, 23 and 27, were adopted.

Paragraph 72

59. Mr. ANDO (Rapporteur) said that, in accordance with the decision taken by the Committee, the Secretariat had attempted to contact Mr. Fodor, Special Rapporteur for follow-up of communications, but had not been successful. He suggested that the following sentence should be added after he had himself been able to contact Mr. Fodor: "The Special Rapporteur for follow-up measures submitted in writing some of the information concerning communications and their follow-up and made it known to the Committee in a closed meeting."

60. It was so decided.

61. Paragraph 72, as orally amended, was adopted.

62. Document CCPR/C/45/CRP.1/Add.25 as a whole, as orally amended, was adopted.

Document CCPR/C/45/CRP.1/Add.26

63. Mr. ANDO (Rapporteur) said that those members of the Committee who so wished could communicate to him any necessary amendments, which he would incorporate into the document with the assistance of the Secretariat.

64. Document CCPR/C/45/CRP.1/Add.26 was adopted.

Document CCPR/C/45/CRP.1/Add.27

65. Document CCPR/C/45/CRP.1/Add.27 was adopted.

Document CCPR/C/45/CRP.1/Add.28

66. Miss CHANET recalled that general comment 21, concerning article 10 of the Covenant, contained an error. She hoped that it had been corrected.

67. Document CCPR/C/45/CRP.1/Add.28 was adopted.

Document CCPR/C/45/CRP.1/Add.29

68. Document CCPR/C/45/CRP.1/Add.29 was adopted.

Document CCPR/C/45/CRP.1/Add.30

69. The CHAIRMAN said that reference would be made to annex VIII at the beginning of each of the parts of the report devoted to the consideration of the periodic reports of States parties in order to inform the reader of the composition of each State party's delegation.

70. Document CCPR/C/45/CRP.1/Add.30 was adopted.

Document CCPR/C/45/CRP.1/Add.31

71. Document CCPR/C/45/CRP.1/Add.31 was adopted.

Document CCPR/C/45/CRP.1 (continued)

72. Mr. HERNDL proposed that a paragraph concerning the very important document, the Yearbook of the Human Rights Committee, should be added to chapter I of the annual report; the Yearbook was in a manner of speaking the official record of the Committee, but the most recent volume issued (in English) was volume II for 1983/1984. It was vital to publicize the work of the Committee more rapidly, which was the purpose of the following amendment which he proposed: "With regard to the Yearbook of the Human Rights Committee, which is the official record of the Committee, the Committee noted that the Yearbook has been published up to 1984 inclusive. The Committee was informed that the manuscript for the Yearbook 1985-1986 had been submitted. The actual backlog in publication is thus eight years. It is the Committee's wish that work on the Yearbook, as the official record of the Committee, be accelerated with a view to eliminating the existing backlog as soon as possible. The Committee expresses the hope that in the future the Yearbook will be published on a regular and timely basis." The paragraph could appear under the heading "Yearbook of the Human Rights Committee".

73. Miss CHANET endorsed Mr. Herndl's proposal. She thought that it was a matter which the Committee could discuss in connection with it suggestions and proposals for the World Conference on Human Rights.

74. The CHAIRMAN said that the text proposed by Mr. Herndl would appear in chapter I of the Committee's annual report. Consideration of the draft annual report had thus been completed.

75. The annual report of the Human Rights Committee to the General Assembly as a whole was adopted.

The meeting was suspended at 11.45 a.m.